

Attachment 10

Domestic Violence Statutes

968.075 Domestic abuse incidents; arrest and prosecution. (1) DEFINITIONS. In this section:

(a) “Domestic abuse” means any of the following engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.
3. A violation of s. 940.225 (1), (2), or (3).
4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1., 2. or 3.

(b) “Law enforcement agency” has the meaning specified in s. 165.83 (1) (b).

(2) CIRCUMSTANCES REQUIRING ARREST. (a) Notwithstanding s.968.07 and except as provided in par. (b), a law enforcement officer shall arrest and take a person into custody if:

1. The officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person’s actions constitute the commission of a crime; and
2. Either or both of the following circumstances are present:
 - a. The officer has a reasonable basis for believing that continued domestic abuse against the alleged victim is likely.
 - b. There is evidence of physical injury to the alleged victim.

(b) If the officer’s reasonable grounds for belief under par. (a) 1. are based on a report of an alleged domestic abuse incident, the officer is required to make an arrest under par. (a) only if the report is received, within 28 days after the day the incident is alleged to have occurred, by the officer or the law enforcement agency that employs the officer.

(3) LAW ENFORCEMENT POLICIES. (a) Each law enforcement agency shall develop, adopt, and implement written policies regarding arrest procedures for domestic abuse incidents. The policies shall include, but are not limited to, the following:

1. Statements emphasizing that:
 - a. In most circumstances, other than those under sub. (2), a law enforcement officer should arrest and take a person into custody if the officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person’s actions constitute the commission of a crime.
 - b. When the officer has reasonable grounds to believe that spouses, former spouses or other persons who reside together or formerly resided together are committing or have committed domestic abuse against each other, the officer does not have to arrest both persons, but should arrest the person whom the officer believes to be the primary physical aggressor. In determining who is the primary physical aggressor, an officer should consider the intent of this section to protect victims of domestic violence, the relative degree of injury or fear inflicted on the persons involved and any history of domestic abuse between these persons, if that history can reasonably be ascertained by the officer.
- c. A law enforcement officer’s decision as to whether or not to arrest under this section may not be based on the consent of the victim to any subsequent prosecution or on the relationship of the persons involved in the incident.

d. A law enforcement officer’s decision not to arrest under this section may not be based solely upon the absence of visible indications of injury or impairment.

2. A procedure for the written report and referral required under sub. (4).

3. A procedure for notifying the alleged victim of the incident of the provisions in sub. (5), the procedure for releasing the arrested person and the likelihood and probable time of the arrested person’s release.

(b) In the development of these policies, each law enforcement agency is encouraged to consult with community organizations and other law enforcement agencies with expertise in the recognition and handling of domestic abuse incidents.

(c) This subsection does not limit the authority of a law enforcement agency to establish policies that require arrests under more circumstances than those set forth in sub. (2).

(4) REPORT REQUIRED WHERE NO ARREST. If a law enforcement officer does not make an arrest under this section when the officer has reasonable grounds to believe that a person is committing or has committed domestic abuse and that person’s acts constitute the commission of a crime, the officer shall prepare a written report stating why the person was not arrested. The report shall be sent to the district attorney’s office, in the county where the acts took place, immediately after investigation of the incident has been completed. The district attorney shall review the report to determine whether the person involved in the incident should be charged with the commission of a crime.

(5) CONTACT PROHIBITION. (a) 1. Unless there is a waiver under par. (c), during the 24 hours immediately following an arrest for a domestic abuse incident, the arrested person shall avoid the residence of the alleged victim of the domestic abuse incident, and, if applicable, any premises temporarily occupied by the alleged victim, and avoid contacting or causing any person, other than law enforcement officers and attorneys for the arrested person and alleged victim, to contact the alleged victim.

2. An arrested person who intentionally violates this paragraph shall be required to forfeit not more than \$1,000.

(b) 1. Unless there is a waiver under par. (c), a law enforcement officer or other person who releases a person arrested for a domestic abuse incident from custody less than 24 hours after the arrest shall inform the arrested person orally and in writing of the requirements under par. (a), the consequences of violating the requirements and provisions of s. 939.621. The arrested person shall sign an acknowledgement on the written notice that he or she has received notice of, and understands the requirements, the consequences of violating the requirements and the provisions of s. 939.621. If the arrested person refuses to sign the notice, he or she may not be released from custody.

2. If there is a waiver under par. (c) and the person is released under subd. 1., the law enforcement officer or other person who releases the arrested person shall inform the arrested person orally and in writing of the waiver and the provisions of s. 939.621.

3. Failure to comply with the notice requirement under subd. 1. regarding a person who is lawfully released from custody bars a prosecution under par. (a), but does not affect the application of s. 939.621 in any criminal prosecution.

(c) At any time during the 24-hour period specified in par. (a), the alleged victim may sign a written waiver of the requirements in par. (a). The law enforcement agency shall have a waiver form available.

(d) The law enforcement agency responsible for the arrest of a person for a domestic abuse incident shall notify the alleged victim of the requirements under par. (a) and the possibility of, procedure for and effect of a waiver under par. (c).

(e) Notwithstanding s. 968.07, a law enforcement officer shall arrest and take a person into custody if the officer has reasonable grounds to believe that the person has violated par. (a).

(6) CONDITIONAL RELEASE. A person arrested and taken into custody for a domestic abuse incident is eligible for conditional release. Unless there is a waiver under sub. (5) (c), as part of the conditions of any such release that occurs during the 24 hours immediately following such an arrest, the person shall be required to comply with the requirements under sub. (5) (a) and to sign the acknowledgment under sub. (5) (b). The arrested person's release shall be conditioned upon his or her signed agreement to refrain from any threats or acts of domestic abuse against the alleged victim or other person.

(6m) OFFICER IMMUNITY. A law enforcement officer is immune from civil and criminal liability arising out of a decision by the officer to arrest or not arrest an alleged offender, if the decision is made in a good faith effort to comply with this section.

(7) PROSECUTION POLICIES. Each district attorney's office shall develop, adopt and implement written policies encouraging the prosecution of domestic abuse offenses. The policies shall include, but not be limited to, the following:

(a) A policy indicating that a prosecutor's decision not to prosecute a domestic abuse incident should not be based:

1. Solely upon the absence of visible indications of injury or impairment;
2. Upon the victim's consent to any subsequent prosecution of the other person involved in the incident; or
3. Upon the relationship of the persons involved in the incident.

(b) A policy indicating that when any domestic abuse incident is reported to the district attorney's office, including a report made under sub. (4), a charging decision by the district attorney should, absent extraordinary circumstances, be made not later than 2 weeks after the district attorney has received notice of the incident.

(8) EDUCATION AND TRAINING. Any education and training by the law enforcement agency relating to the handling of domestic abuse complaints shall stress enforcement of criminal laws in domestic abuse incidents and protection of the alleged victim. Law enforcement agencies and community organizations with expertise in the recognition and handling of domestic abuse incidents shall cooperate in all aspects of the training.

(9) ANNUAL REPORT. (a) Each district attorney shall submit an annual report to the department of justice listing all of the following:

1. The number of arrests for domestic abuse incidents in his or her county as compiled and furnished by the law enforcement agencies within the county.
2. The number of subsequent prosecutions and convictions of the persons arrested for domestic abuse incidents.

(b) The listing of the number of arrests, prosecutions and convictions under par. (a) shall include categories by statutory reference to the offense involved and include totals for all categories.

History: 1987 a. 346; 1989 a. 293; 1993 a. 319.

NOTE: 1987 Wis. Act 346, which created this section, states the legislative intent and purpose in section 1 of the Act.

Questions by officer prior to arrest to determine which spouse is primary physical aggressor under sub. (3) (a) 1.b. are investigatory and Miranda warnings are not required where defendant is not deprived of freedom or questioned in coercive environment. *State v. Leprich*, 160 W (2d) 472, 465 NW (2d) 844 (Ct. App. 1991).

Warrantless arrest and detention for bail jumping, 946.49, is authorized if probable cause exists that the arrestee violated the contact prohibition in (5) (a) 1 after being released under ch. 969.78 Atty. Gen. 177.

This section applies to roommates living in university residence halls, whether privately or state owned. If criteria requiring arrest under (2) exist, law enforcement officer must make custodial arrest. 79 Atty. Gen. 109.